

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

JANUARY TERM, 1903.

No. 1278.

204

No. 15, SPECIAL CALENDAR.

JOHN HAYES, APPELLANT,

vs.

AULICK PALMER, MARSHAL OF THE UNITED STATES
IN AND FOR THE DISTRICT OF COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JANUARY 28, 1903.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia

JOHN HAYES, Appellant,
vs.
AULICK PALMER, Marshal of the United States in and for the District of Columbia.

} No. 1278.

a Supreme Court of the District of Columbia.

In re the Petition of JOHN HAYES. No. 333. *Habeas Corpus*.

UNITED STATES OF AMERICA, { ss:
District of Columbia,

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Petition for Writ of Habeas Corpus.*

Filed October 31, 1902.

In the Supreme Court of the District of Columbia.

In re the Petition of JOHN HAYES. No. 333. *Habeas Corpus*.

To the honorable justices of said court:

Your petitioner respectfully represents as follows:

1. That he is a citizen of the United States and a resident of the city of Washington, District of Columbia.

2. That on the 31st day of October, 1902, your petitioner was arrested by Aulick Palmer, United States marshal in and for the District of Columbia, on a warrant issued by the chief justice of the supreme court of the District of Columbia, which said warrant was issued on a requisition from the governor of the State of Maryland, in which he alleges that your petitioner was and is now a fugitive from justice from said State. The indictment contained in said requisition papers alleging your petitioner to be guilty of keeping a gaming table.

3. Your petitioner further states that he has been in Prince George's county, the State of Maryland, since said indictment was returned against him and has not fled from the State.

4. That said indictment does not allege a crime against the State

of Maryland, and that the said requisition and the papers it contains are defective and void.

5. That Aulick Palmer unlawfully detains your petitioner in his custody against his will and without right, wherefore your petitioner respectfully prays:

2 That a writ of *habeas corpus* issue directed to the said Aulick Palmer commanding him to bring the body of your petitioner before your honorable court and that he may be discharged from said unlawful arrest.

JOHN HAYES.

L. L. MONTAGUE,
LORENZO A. BAILEY,
Solicitors.

I solemnly swear that I have read the above petition by me subscribed and know the contents thereof; that the statements therein contained upon my own personal knowledge are true and those stated upon information and belief I believe to be true.

JOHN HAYES.

Subscribed and sworn to before me this 31st day of October, 1902.

J. R. YOUNG, *Clerk*,
By J. W. LATIMER, *Ass't Cl'k.*

Endorsed: Let the writ of *habeas corpus* issue as prayed. E. F. Bingham, chief justice, supreme court, D. C.

3

Writ of Habeas Corpus.

Filed in Open Court October 31, 1902. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

In the Matter of the Petition for Writ of *Habeas Corpus* for JOHN HAYS. No. 333.

The President of the United States to Aulick Palmer, Greeting:

You are hereby commanded to have the body of John Hayes detained under your custody, as it is said, together with the day and cause of his being taken, and detained, by whatever name he may be called in the same, before the Honorable E. F. Bingham, chief justice of the supreme court of the District of Columbia, at the United States court-house, city of Washington (immediately), on the 31st day of Octo. 1902, after the receipt of this writ, to do and receive whatever shall then and there be considered of in his behalf, and have then and there this writ.

Witness, the Honorable Edward F. Bingham, chief justice of said court, the 31st day of Octo. A. D. 1902.

Test:

J. R. YOUNG, *Clerk*,
By F. W. SMITH,
Assistant Clerk.

Marshal's Return.

The marshal now produces the body of John Hayes and says he holds him by virtue of a warrant of arrest issued from this court on requisition from governor of Maryland, a certified copy of this warrant together with the requisition on which it is based are hereto annexed and made a part of this return.

AULICK PALMER, *Marshal.*

Oct. 31, 1902.

4

Requisition.

Filed October 29, 1902. J. R. Young, Clerk.

STATE OF MARYLAND, EXECUTIVE DEPARTMENT.

To the Honorable E. F. Bingham, chief justice of the supreme court of the District of Columbia:

Whereas, it appears by a copy of an indictment and other papers, hereto annexed and duly authenticated in accordance with the laws of this State, that John Hayes stand- charged with the crime of gambling, committed in the county of Prince George's, in this State.

And whereas, it has been represented to me that the said John Hayes has fled from justice, and has taken refuge within the District of Columbia.

Now, therefore, pursuant to the provisions of the Constitution, and laws of the United States, in such case made and provided, I, John Walter Smith, governor of the State of Maryland, do hereby request that the said John Hayes be apprehended and delivered to Arthur B. Suit, Esquire, who is hereby authorized to receive and convey him, the said John Hayes, to the State of Maryland, there to be dealt with according to law.

5 Given under my hand and the great seal of the State of Maryland.

Done at the city of Annapolis, on this 28th day
[GREAT SEAL.] of October in the year of our Lord, one thousand nine hundred and two.

JOHN WALTER SMITH.

By the governor:

ALFRED BATEMAN,
Secretary of State.

6 To His Excellency John Walter Smith, governor of Maryland.

SIR: I hereby make application to Your Excellency for the issue of a requisition upon the chief justice of the supreme court of the District of Columbia, for the delivery unto the sheriff of Prince George's county aforesaid, of a certain John Hayes who stands

charged upon the annexed indictment with having on the second day of June, in the year of our Lord one thousand nine hundred and two, kept a certain gaming table, at the said county, for gambling then and there, other than a billiard table, at which said gaming table a certain game of chance was then and there played for money.

I hereby further certify, that if the facts stated in the accompanying indictment be true, they would, in my opinion, lead to the conviction of the party accused. I further certify that since this offense was committed, and before the party could be arrested, he made his escape, and is now a fugitive from justice in the said District of Columbia, where he is now in the city of Washington. I request that an authority shall issue with the requisition hereby demanded, to Arthur B. Suit, Esq., as the agent of the State of Maryland, to receive the said prisoner, and to act in that regard as the laws justify, &c.

WM. M. LEWIN,
State's Attorney for Prince George's County, Maryland.

7 In the Circuit Court for Prince George's County, Maryland.

STATE OF MARYLAND	}	No. 34, Criminal Trials, October Term, 1902.
vs.		
JOHN HAYES.		

1902, October 11th.—Presentment and indictment for keeping a gaming table, to wit: a slot machine, filed.

Presentment.

STATE OF MARYLAND,	}	To wit:
<i>Prince George's County,</i>		

The grand jurors of the State of Maryland, for the body of Prince George's county on their oaths, do present that John Hayes, late of said county, on the 2nd day of June, in the year of our Lord one thousand nine hundred and two, with force and arms at the county aforesaid did keep a gaming table, to wit, a slot machine.

This on the oaths and information of Jack Tarman and Lee Tarman.

H. B. BIRD, *Foreman.*

Indictment.

STATE OF MARYLAND,	}	To wit:
<i>Prince George's County,</i>		

The grand jurors of the State of Maryland, for the body of Prince George's county, on their oath do present, that John Hayes, late of said county, on the second day of June, in the year of our Lord one

8 thousand nine hundred and two, at the county aforesaid, did keep a certain gaming table for gambling then and there, other than a billiard table, at which said gaming table a certain game of chance was then and there played for money, contrary to the form of the statute in such case made and provided and against the peace, government and dignity of the State.

Second count.

And the jurors aforesaid, on their oath aforesaid, do further present, that the said John Hayes, on the said day, in the said year, at the said county, did manage a certain gaming table for gambling then and there, other than a billiard table, at which said last-mentioned gaming table a certain game of chance was then and there played for money, contrary to the form of the statute, in such case made and provided, and against the peace, government and dignity of the State.

Third count.

And the jurors aforesaid on their oath aforesaid, do further present, that the said John Hayes, on the said day, in the said year, at the said county, had an interest in, and in the profits of, a certain gaming table for gambling, then and there, other than a billiard table, at which said last-mentioned gaming table a certain game of chance was then and there played for money, contrary to the form of the statute in such case made and provided and against the peace, government and dignity of the State.

Fourth count.

9 And the jurors aforesaid, on their oath aforesaid, do further present, that the said John Hayes, on the said day, in the said year, at the said county, did keep a certain place, to wit, a house for gambling then and there, contrary to form of the statute in such case made and provided and against the peace, government and dignity of the State.

Fifth count.

And the jurors aforesaid, on their oath aforesaid, do further present, that the said John Hayes, on the said day, in the said year, at the said county, did manage a certain place, to wit, a house for gambling then and there, contrary to the form of the statute in such case made and provided and against the peace, government and dignity of the State.

Sixth count.

And the jurors aforesaid, on their oath aforesaid, do further present, that the said John Hayes, on the said day, in the said year, at the said county, being then and there the manager of a certain place, to wit, a house there, did knowingly permit a gaming table other

than a billiard table, to be then and there kept therein for gambling thereat, then and there, contrary to the form of the statute in such case made and provided and against the peace, government and dignity of the State.

WM. M. LEWIN,
The State's Attorney.

Bench Warrant.

PRINCE GEORGE'S COUNTY, }
State of Maryland, } *sct* :

To the sheriff of Prince George's county, Greeting :

You are hereby commanded to take John Hayes if he
[SEAL.] shall be found in your bailwick, and him safe-keep so
that you have his body before the circuit court for said
10 county, now holding at the town of Upper Marlboro in said
county, immediately to answer unto the State of Maryland,
on presentment and indictment for keeping a gaming table, to wit;
a slot machine. Hereof fail not at your peril, and have then and
there this writ.

Witness, the Hon. John P. Briscoe, chief judge of the seventh
judicial circuit of Maryland, 11th day of October 1902. Issued 11th
day of October, 1902.

JAMES B. BELT,
Clerk of the Circuit Court of Prince George's County.

11

AUTHENTICATION OF RECORD.

Clerk's office, circuit court for Prince George county, Maryland.

I, James B. Belt, clerk of the said court, do hereby certify that
the writings annexed to this certificate are true copies of originals on
file and of record in said office, and that said originals, together,
constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 23rd day of
October, 1902.

[SEAL.]

JAS. B. BELT, *Clerk.*

I, Geo. C. Merrick, associate judge of said court, do certify the
foregoing attestation by James B. Belt, clerk of the said court, to be
in due form, and by the proper officer.

Witness my hand and seal this 23rd day of October, 1902.

GEO. C. MERRICK. [SEAL.]
A. J.

I, James B. Belt, clerk of said court, hereby certify that Geo. C.
Merrick, whose genuine signature is subscribed to the foregoing
certificate, was, at the time of signing and attesting the same,
associate judge of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 23rd day of October, 1902.

[SEAL.]

JAS. B. BELT, *Clerk.*

12

Order for Warrant of Arrest.

Filed in Open Court Oct. 29, 1902. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, at Chambers, the
29th Day of Octo., 1902.

<p><i>In re</i> THE STATE OF MARYLAND vs. JOHN HAYES.</p>	}	No. 285, Req. Docket.
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The governor of the State of Maryland having made requisition upon the chief justice of said court, dated the 28th day of Octo. 1902 for the delivery to Arthur B. Suit, agent of said State, of John Hayes, a fugitive from justice, charged in the county of Prince George, in said State, with the crime of gambling, it is hereby ordered that a warrant be issued to the United States marshal for the District of Columbia, commanding him to apprehend and bring the said fugitive before me forthwith (on the 29th day of Octo. 1902), to be dealt with according to law.

E. F. BINGHAM,
Chief Justice.

13

Filed in Open Court October 31, 1902.

Warrant of Arrest.

Issued October 29, 1902.

Before the Chief Justice of the Supreme Court of the District of Columbia, the 29th Day of Octo., 1902.

<p><i>In re</i> THE STATE OF MARYLAND vs. JOHN HAYES.</p>	}	No. 285, — Docket.
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The President of the United States to the United States marshal for the District of Columbia, Greeting:

The governor of the State of Maryland having made demand upon the chief justice of said court for the delivery to Arthur B. Suit, agent of said State, of John Hayes charged in the county of Prince George in said State, with the crime of gambling, and who, as it is alleged, ha- fled from the justice of said State and taken refuge in this District; therefore, if he be at large, you are hereby commanded immediately to arrest and bring him, or if he be already

in custody, to bring him, together with this writ, before the chief justice of the supreme court of said District, at the United States court-house in the city of Washington, then and there to be dealt with according to law.

Witness E. F. Bingham, chief justice.

By order of the chief justice.

[SEAL.]

J. R. YOUNG, *Clerk*,
By F. W. SMITH, *Ass't Clerk*.

14

Marshal's Return.

Cepi.

Oct. 31, 1902.

AULICK PALMER,
U. S. Marshall.

Endorsed.

Octo. 31, 1902.

It is ordered that the hearing of this matter be postponed until Friday, the 7th day of Nov., 1902. See *habeas corpus* No. 333.

E. F. BINGHAM,
Chief Justice.

15

Order of Court Dismissing Petition, &c.

Appeal & Bond.

Filed November 22, 1902.

In the Supreme Court of the District of Columbia.

In re JOHN HAYES. H. C. No. 333.

Upon hearing the petition for a writ of *habeas corpus*, the return of the marshal thereto, the oral evidence adduced, and arguments of counsel, it is ordered that the writ be, and hereby is quashed, and the petition dismissed, and the petitioner be, and hereby is remanded to the custody of the United States marshal in and for the District of Columbia, until further order of the court.

E. F. BINGHAM,
Chief Justice.

Nov. 22, 1902.

Appeal noted by petitioner to Court of Appeals, and the bond for costs is fixed in the sum of \$50.00.

Order Allowing Petitioner to Give Bail.

Filed November 22, 1902.

In the Supreme Court of the District of Columbia.

In re JOHN HAYES. H. C. No. 333.

16 The petitioner having appealed to the Court of Appeals from the judgment discharging the writ of *habeas corpus* and remanding him into custody, and having prayed that he be enlarged on recognizance pending the determination of said appeal, it is this 22nd day of November, 1902, ordered that the petitioner be enlarged on his recognizance in the sum of five hundred (\$500) dollars, with surety to be approved by the court.

E. F. BINGHAM,
Chief Justice.

Memoranda.

November 22, 1902.—Recognizance \$500, with James Richardson as surety filed.

December 17, 1902.—Appeal bond \$50.00 for costs filed.

17

JANUARY 2, 1903.

In re JOHN HAYES. No. 333. *Habeas Corpus.*

Now comes here the petitioner by his attorneys Messrs. R. L. Montague and L. A. Bailey and presents to the court his bill of exceptions to the rulings of the court taken at the hearing on said petition and prays that the same may be signed, sealed and made a part of the record which is done accordingly, *nunc pro tunc*.

18

Bill of Exceptions.

Filed January 2, 1903.

In the Supreme Court of the District of Columbia.

In re JOHN HAYES. No. 333. *Habeas Corpus.*

Be it remembered that upon the hearing of the petition of the said John Hayes, herein filed before the Honorable Edward F. Bingham, chief justice of this court, begun and held on the 21st day of November, 1902, the petitioner offered evidence tending to prove that he was now and for seventeen years last past had been a resident of the District of Columbia, where, in the city of Washington, he owned and operated a saloon, and that one Pumphrey was, and for several years last past had been his barkeeper at said saloon ;

that on the second day of June, 1902, being the date named in the indictment and requisition, which said indictment and requisition were duly made part of the return of the respondent herein, he, the said Hayes, was not within the State of Maryland, but that he had been in said State and in the county of Prince George shortly before said date and shortly after said date, and frequently during the summer of 1902. Petitioner further offered evidence to show that the premises upon which the said offense charged in said indictment was alleged to have been committed were at the said date in the possession of said Pumphrey, to whom the petitioner who was lessee of the premises, had previously sublet the same, and that the said premises were not at the date of the said alleged offense under

the control of the petitioner and that the license to conduct
19 the retail liquor business upon the same day, on said 2d day of June, — in the name of said Pumphrey; that since proceedings in the county of Prince George in the State of Maryland had been instituted by the proper authorities for the prosecution of said petitioner upon the charges set forth in the indictment accompanying said requisition papers had been commenced and while such prosecution was actually in progress the said petitioner had been on several occasions within said county openly and without concealment and in the daytime and that no effort had been made on his part since the institution of said proceedings to evade service of process in said county.

The respondent thereupon offered evidence tending to show that the sheriff of Prince George county had had since the date of the finding of said indictment and still had in his possession a bench warrant for the arrest of petitioner for the offense alleged in said indictment, and that the said sheriff had since been unable to serve said warrant on petitioner in said State, and had not seen him there since his said escape.

This was substantially all the evidence offered, and thereupon the chief justice ruled that the evidence so adduced by the petitioner as aforesaid was insufficient to entitle him to be discharged under the writ of *habeas corpus* herein issued and that the said writ should be quashed and the petitioner remanded to the custody of the marshal of this District until the further order of this court, to which ruling and every part thereof the petitioner, by his attorneys, then and there duly excepted, which said exception was then and there duly

noted by the chief justice upon his minutes. And thereupon
20 on the 22nd day of November, A. D. 1902, the chief justice passed and caused to be entered of record in this court, an order quashing said writ and remanding said petitioner to the custody of the marshal aforesaid, until the further order of this court; to which order the petitioner, by his attorneys, then and there duly excepted; which said exception was then and there by the chief justice duly noted upon his minutes. And thereupon the petitioner, by his attorneys, in open court, duly noted an appeal from said ruling and from said order to the Court of Appeals of the District of Columbia.

And the petitioner, by his attorneys, now here prays the court to sign this his bill of exceptions, which is accordingly done this 2d day of January, A. D. 1903.

E. F. BINGHAM,
Chief Justice Supreme Court D. C.

21 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } ss :

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 20, inclusive, to be a true and correct transcript of the record, as per rule 5 of the Court of Appeals of the District of Columbia, in cause No. 333, *habeas corpus*, *In re* the petition of John Hayes, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe
Seal Supreme Court my name and affix the seal of said court, at
of the District of the city of Washington, in said District, this
Columbia. 20 day of January, A. D. 1903.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1278. John Hayes, appellant, *vs.* Aulick Palmer, marshal of the United States in and for the District of Columbia. Court of Appeals, District of Columbia. Filed Jan. 28, 1903. Robert Willett, clerk.